IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 10140 of 2007(F)

OS.718/1994 of II ADDL.M.C., ERNAKULAM

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PETITIONER:

BIJU, 30 YEARS, S/O.KUTTAN,
VATTAKKATTU VELIYIL VEEDU, UDAYAMPEROOR KARA,
MANAKUNNAM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.M.K.SUCHEENDRAN
SRI.K.RAVINDRANATHAN

RESPONDENTS:

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1. SURESH ABOUT 48 YEARS,
S/O.LATE PRABHAKARAN, MULLAMANGALATH HOUSE,
NEAR KOTTATHUPARA JUNCTION, KUREEKKAD VILLAGE,
KANAYANNUR TALUK.

2. M.K.DIVAKARAN, ABOUT 70 YEARS,
S/O.KUTTAPPAN, MULLAMANGALATH HOUSE,
KUREEKKAD VILLAGE IN KANAYANNUR TALUK, NOW
RESIDING NEAR NGO QUARTERS, KAKKANAD P.O.,
ERNAKULAM DISTRICT.

3. THE SUB INSPECTOR OF POLICE,
MULANTHURUTHY POLICE STATION.

4. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR ERNAKULAM.

5. COMMISSIONER OF POLICE, ERNAKULAM.

R3 TO 5 BY GOVERNMENT PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 10140 of 2007 F

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Dated this the 19th day of October, 2007

JUDGMENT

The petitioner is the second accused in Crime No.421 of 2005 of Mulanthuruthy police station. He had come to this Court with this Writ Petition with a prayer to quash the F.I.R. in Crime No.421 of 2005. During the pendency of this writ petition, final report was filed arraying the petitioner as second accused. Thereafter the writ petition has been amended to include the prayer that the final report may itself be quashed in so far as it relates to the petitioner herein.

2. The F.I. statement was lodged by the defacto complainant, one Divakaran. According to him, he had litigated for a long period of time and had obtained a civil court's decree for partition in favour of him. To his shock and dismay, he realised when he applied for an encumbrance certificate, that a document has been created by some one, under which his rights in the property were assigned to one Karthikeyan/A1 in this case. That document was registered as document No.2093 of 2002 of S.R.O., Mulanthuruthy. He promptly lodged a F.I. statement before the Mulanthuruthy police arraying the

first accused/Karthikeyan, the assignee, A3, Rajesh, the scribe and the 4th accused/Babu, an identifying witness. He alleged that these three persons are responsible, as can be ascertained from the document, for bringing into existence of such a false document. The petitioner's name was not mentioned at all in the F.I. statement.

3. In the course of investigation it was realised that the first accused Karthikeyan had, as per a document No.3813 of 2005 of S.R.O., Mulanthuruthy, transferred his rights to the petitioner herein. Investigation further revealed that the petitioner had played a very active role in brining into existence the earlier forged document. It was accordingly that the petitioner was arrayed as the second accused and the accused were assigned fresh ranks in the crime.

4. In the course of the investigation, the Investigator made attempts to trace the original of the forged document. According to Karthikeyan/A1, he had, while executing the document in favour of the petitioner, handed over the original document to the petitioner. The petitioner did not produce the document. He took a plea that he handed over the original of the document to one Francis. The said Francis pleaded that he had not received the original document at all. It is the case of the prosecution now that the

petitioner had played a very active role to bring into existence the first forged document, which is purported to be executed by the defacto complainant. It is also alleged that he has deliberately suppressed or destroyed the said document. According to the Investigator, on the basis of these circumstances, he sailed to the conclusion that the petitioner was contumaciously and culpably responsible for the creation of the forged document. It is accordingly that final report has been filed.

5. In the course of investigation, as the original of the allegedly forged document was not forthcoming, the signed document available at the Registrar's office and the thumb impression Register were sent for examination of the expert and the report has been obtained that the defacto complainant Divakaran had not executed the document nor affixed his thumb impression. The person who impersonated as Divakaran has not been traced by the police in the course of investigation. But it is the case of the prosecution that accused 1 to 4, acting in collusion and in prosecution of a conspiracy hatched by them, had brought into existence the false document purportedly executed by the defacto complainant.

6. The learned counsel for the petitioner prays that powers under Section 482 Cr.P.C./Article 226 of the Constitution may be invoked to

quash the proceedings against the petitioner. It is, of course, well settled that this Court has jurisdictional competence in an appropriate case to quash a final report filed by the police and the consequent steps taken by the Magistrate after taking cognizance on the final report filed. But that is indeed an extra ordinary inherent jurisdiction under Section 482 Cr.P.C. Such jurisdiction, it is trite, cannot be invoked as a matter of course. Satisfactory, compelling and exceptional reasons must be shown to exist to invoke such powers. Are there such reasons in this case, is the short question to be considered.

7. The materials suggest clearly that the allegation that the defacto complainant had not signed the document is incorrect. That document shows that the first accused is the beneficiary under the document. The materials, if accepted by the trial court, would also show that the petitioner had played a pro-active role in bringing into existence the said document. Even prior to the lodging of the F.I. statement, the first accused had admittedly transferred the rights in respect of the property to the petitioner/A2 as per a subsequent document. The original of the allegedly forged document was handed over to the petitioner admittedly. The petitioner has not produced the said document. His explanation for non-

production has been found by the Investigator to be unsatisfactory and unacceptable.

8. I have adverted to the circumstances relied on by the Investigator. I have not intended to say that these circumstances can be accepted. I need only mention that in the above circumstances I am certainly not persuaded to invoke the extra ordinary inherent jurisdiction that is available to this Court under Section 482 Cr.P.C./Article 226 of the Constitution, which, as stated earlier, is to be invoked only sparingly in an exceptional case in aid of justice only. This, I agree with the learned Prosecutor, is an eminently fit case where the petitioner must appear before the learned Magistrate, take part in the trial, raise and attempt to establish the contentions which he wants to raise and claim discharge/acquittal as the case may be, if he is entitled to it. Premature termination of the proceedings does not at all appear to be necessary.

9. This Writ Petition is accordingly dismissed.

(R. BASANT)
Judge

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